Remarks

New system claim 31 recites similar limitations as those in the method claim 1. Thus, no new matter has been added, and no new search should be required by the addition of new claim 31.

I.   Claim Rejections under 35 U.S.C. § 103.

Claims 1-3, 8-16, and 21-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication US 2003/0005419 (Pieper) in view of *Portable Software Library Optimization*, 2/1998 (Cain).

A.   Pieper does not disclose or suggest repeating an optimization of a software program to obtain an optimized form of the software program that is progressively more machine dependent.

Claim 1 recites:

> (a) optimizing the software program such that a resulting *first optimized form of the software program is completely independent of the target processor* and is at least partially coded in the high-level language, determining a first performance profile for the first optimized form of the software program, and comparing the first performance profile with the performance objectives;
>
> (b) based on results of comparing the first performance profile with the performance objectives, *if the performance objectives are not met by the first optimized form of the software program*, then optimizing the first optimized form of the software program such that *a resulting second optimized form of the software program includes at least one portion that is dependent on the target processor* and is coded in the high-level language.
>
> (Emphasis Added)

Claim 14 recites similar limitations. Thus, the claims describe: (a) obtaining a first optimized form of a software program that is "completely independent" of the target processor, and then (b) if performance objectives are not met by the first optimized form, obtaining a second optimized form having at least one portion that is "dependent" on the target processor. This claimed feature – i.e., optimizing a software program repeatedly to obtain an optimized form of a software program that is progressively more machine dependent, is not disclosed in Pieper nor in Cain. According to page 3 of the Office Action, paragraphs 31, 20, and 45 of Pieper allegedly disclose the limitations in (b) above. Applicant respectfully disagrees.

Pieper discloses a process 50 in which the source code 52 is optimized in step 58 to obtain a first optimized code 60 that is substantially independent (or "independent" as modified by the Examiner based on Cain) of the architecture of the target processor 12 (see figure 2 and corresponding passage of Pieper). In the process 50, the optimized code 60 is then translated and converted to machine-dependent code 74. An analysis 76 is then performed to generate profile data 78, and step 58 is repeated to perform further optimization.

Notably, in Pieper, each time the optimization process 58 is performed, the optimized code is *always* translated into a machine dependent executable code 74 (see figure 2). Thus, in Pieper, the repeating of the optimization step 58 based on a result of the analysis 76 is not to obtain optimized code that is progressively more machine dependent (i.e., more machine dependent that the previous optimized form). Therefore, Pieper clearly does not disclose or suggest the subject matter of claims 1 and 14.

Cain also does not disclose or suggest the above limitations, and therefore fails to make up the deficiencies present in Pieper. Since both Pieper and Cain do not disclose or suggest the above limitations, any purported combination of these references cannot result in the subject matter of claims 1 and 14. For at least the foregoing reasons, Applicant respectfully requests that the § 103 rejections be withdrawn.

B.   Cain does not disclose or suggest the limitations regarding "flagging."

Claim 1 also recites *flagging* the at least one portion to indicate that the at least one portion is dependent on the target processor *if the first optimized form of the software program is optimized to create the second optimized form of the software program* (Emphasis Added). Claim 14 recites similar limitations. Applicant agrees with the Examiner that Pieper does not disclose the above limitations. According to the Office Action, page 7 of Cain discloses "#include" directive, which is purported to be the claimed "flagging." However, as discussed in the last response, Applicant respectfully notes that Cain describes "#include" directive as being used to retrieve a system-specific API mapping source code. Thus, the "#include" in Cain is an actual function, and is not a "flagging" as purported in the Office Action (and certainly not a flagging "to indicate that at least one portion is dependent on a target processor" as described in the claims). Since both Pieper and Cain do not disclose or suggest the above limitations, any purported combination of these references cannot

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result in the subject matter of the claims. For these additional reasons, Applicant respectfully requests that the § 103 rejection be withdrawn.

Also, and more importantly, Applicant respectfully notes that there is nothing in Cain that discloses or suggests that any act of flagging is *conditioned upon* whether "the first optimized form of the software program is optimized to create the second optimized form of the software program" as described in the claim (i.e., note the limitation "if" in the claims). Applicant notes that this argument has not been considered and addressed in the current Office Action, and respectfully request that the Examiner addresses it should the Examiner be inclined to maintain the § 103 rejections.

In addition, according to page 10 of the Office Action, Cain discloses using "#ifdef directives" "for "compile-time conditional code compilation" and that it is allegedly well known "to perform source code inclusion and macro substitution as taught by Cain." However, none of these characterization pointed out by the Examiner actually disclose or suggest the manner of flagging as described in the claims – i.e., flagging that is *conditioned upon* whether the first optimized form of the software program is optimized to create a second optimized form of the software program. For these additional reasons, Applicant respectfully requests that the § 103 rejections be withdrawn.

CONCLUSION

If the Examiner has any questions or comments regarding this response, please contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

The Commissioner is authorized to charge any fees due in connection with the filing of this document to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **00PA339US03**. The Commissioner is authorized to credit any overpayment or to charge any underpayment to Vista IP Law Group's Deposit Account No. **50-1105**, referencing billing number **00PA339US03**.

Respectfully submitted,

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